

Christopher Haupt (“Haupt”) pled guilty in Delaware Circuit Court to one count of Class A felony child molesting, one count of Class C felony child molesting, and one count of Class C felony sexual misconduct with a minor. The trial court sentenced him to an aggregate executed sentence of fifty years. Haupt appeals, raising several issues, which we consolidate and restate as:

- I. Whether the trial court abused its discretion in failing to assign mitigating weight to Haupt’s statement of remorse;
- II. Whether the trial court abused its discretion in finding that the aggravating circumstances outweighed the mitigating circumstances; and,
- III. Whether his sentence is inappropriate in light of the nature of the offense and character of the offender.

We affirm.

Facts and Procedural History

The undisputed facts of this case are that Haupt molested three children. In May 2005, Haupt molested eight-year old C.H., while he was staying with her mother. Sometime between January 2003 and July 2005, Haupt molested K.R., who was also under the age of fourteen. He also had sexual intercourse with fourteen-year-old J.R., the sister of K.R., in February 2005, while he was staying with the girls’ father. Haupt knew these girls pretty well and even occasionally acted as their babysitter. Haupt threatened the girls that he would physically harm them if they told anyone about the offenses.

On July 18, 2005, Haupt was charged with three counts of Class A felony child molesting, one count of Class B felony child molesting and one count of Class A felony

sexual misconduct with a minor. Haupt pled guilty to three of these charges: Class A felony child molesting, a reduced count of Class C felony child molesting, and a reduced count of Class C felony sexual misconduct with a minor. In addition to reducing two of the counts, the State also dismissed the two other felony counts. In the plea agreement, the parties agreed that Haupt's executed term of imprisonment would not exceed fifty years, but in all other respects his sentence would be at the sole discretion of the trial court. Appellant's App. at 25.

On May 3, 2006, the trial court held a sentencing hearing. The trial court found eight aggravating circumstances, which Haupt does not challenge on appeal, and three mitigating circumstances, including Haupt's lack of an extensive criminal history, Haupt's guilty plea, and his completion of his GED while he was incarcerated. The trial court found that the aggravating circumstances far outweighed the mitigating circumstances and ordered Haupt to serve thirty-four years for the Class A felony and eight years on each of the Class C felony counts, all to be served consecutively for an aggregate executed sentence of fifty years. In essence, the trial court enhanced each of the three sentences by four years. Haupt now appeals his sentence. Additional facts will be provided as necessary.

I. Statement of Remorse

Haupt first contends that the trial court abused its discretion in failing to find his expression of remorse as a mitigating circumstance. The finding of mitigating circumstances lies within the trial court's discretion. Spears v. State, 735 N.E.2d 1161, 1167 (Ind. 2000) (citation omitted). The failure to find a mitigating circumstance clearly

supported by the record may imply that the trial court overlooked the circumstance. Sipple v. State, 788 N.E.2d 473, 480 (Ind. Ct. App. 2003), trans. denied. The trial court, however, is not obligated to consider “alleged mitigating factors that are highly disputable in nature, weight, or significance.” Id. (citation omitted). The trial court need enumerate only those mitigating circumstances it finds to be significant. Battles v. State, 688 N.E.2d 1230, 1236 (Ind. 1997) (citation omitted). On appeal, a defendant must show that the proffered mitigating circumstance is both significant and clearly supported by the record. Spears, 735 N.E.2d at 1167 (citing Carter v. State, 711 N.E.2d 835, 838 (Ind. 1999)).

There is conflicting evidence in the record regarding Haupt’s remorse. At his sentencing hearing, Haupt read a statement in which he said he was remorseful for his actions. On the other hand, based upon the psychiatric evaluation, the prosecutor argued that his *lack* of remorse should be given aggravating weight. Sent. tr. p. 8. In fact, Haupt told one of the psychiatric doctors he did not believe the girls he had molested had been injured as they were happy and living normal lives. Id. The trial court duly considered what weight it should give to Haupt’s remorse, saying,

The fact you say you are remorseful today, I’ll take that into consideration, but at the time of the interviews by a psychiatrist and a psychologist, who I think are trained to make sure you understand their questions and they understand your responses, there was no remorse that I see. Today at sentencing when you’re looking at maybe fifty years in prison, all of a sudden you worry about them and want to be cured. I think that subtracts from that.

Id. at 13-14.

A trial court's determination of a defendant's remorse is similar to a determination of credibility. Pickens v. State, 767 N.E.2d 530, 534-535 (Ind. 2002). The trial court is in the best position to judge the sincerity of a defendant's remorseful statements. Stout v. State, 834 N.E.2d 707, 711 (Ind. Ct. App. 2005), trans. denied. Without evidence of some impermissible consideration by the court, we accept its determination of credibility. Pickens, 767 N.E.2d at 535. Haupt does not allege any impermissible considerations. Thus, the trial court did not abuse its discretion by failing to consider Haupt's alleged remorse to be a mitigating factor, especially given that Haupt planned out how to commit the molestations and then threatened the girls with harm if they told anybody about the offenses.

II. Weight of Aggravating and Mitigating Circumstances

Haupt next contends that the trial court should have afforded more mitigating weight to his lack of a criminal history and his guilty plea. He asserts that a proper weighing of the valid aggravating and mitigating circumstances should result in the imposition of a lesser sentence. We cannot agree.

In this case, the trial court found eight aggravating circumstances, including (1) the harm to the victims being greater than the elements necessary to prove the commission of the offenses, (2) the difference in ages between the victims and the offender, (3) the fact that the crimes were designed to take advantage of the victims' ages, (4) that Haupt committed the crimes in the presence or within the hearing of individuals who were less than eighteen years of age, (5) that Haupt was in a position of trust with the children, (6) that Haupt threatened to harm the children if they told anyone

about the offenses, (7) the high degree of risk that Haupt would commit another crime based on his evaluated classification as a sexually violent predator, and (8) the fact that Haupt is in need of correctional or rehabilitation treatment best provided by a penal facility. While Haupt does not contest the validity of these aggravating circumstances, he contends that the trial court improperly determined that the aggravating factors outweighed the mitigating factors.

Haupt first contends that the trial court did not afford enough mitigating weight to his guilty plea. Sentencing decisions lie within the sound discretion of the trial court and are reviewed only for an abuse of that discretion. Powell v. State, 751 N.E.2d 311, 314 (Ind. Ct. App. 2001) (citation omitted). Only when a trial court fails to find a mitigator that the record clearly supports do we reasonably believe the trial court improperly overlooked the mitigator. Highbaugh v. State, 773 N.E.2d 247, 252 (Ind. 2002). A trial court is not obligated to weigh or credit the mitigating factors as the defendant requests. Id. The trial court is also not obligated to explain why it did not find a factor to be significantly mitigating. Chambliss v. State, 746 N.E.2d 73, 78 (Ind. 2001).

Here, Haupt cannot demonstrate that his guilty plea is entitled to significant mitigating weight as he received a substantial benefit from his plea agreement in that the State dismissed two of the Class A felony charges and also reduced one count from a Class B felony to a Class C felony and a second count from a Class A felony to a Class C felony. See Wells v. State, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), trans. denied, (holding that a defendant's guilty plea is not worthy of significant mitigation where the

defendant receives substantial benefit). We cannot say that the trial court abused its discretion when it did not assess more mitigating weight to Haupt's guilty plea.

Haupt next contends that the trial court should have given greater weight to his lack of a serious criminal history. The trial court found his lack of an extensive criminal history to be a mitigating circumstance, and therefore the trial court did not improperly overlook this mitigator. The trial court was not obligated to weigh or credit this mitigating factor as Haupt requested. See Highbaugh, 773 N.E.2d at 252. Furthermore, our supreme court has held that a criminal history consisting of no prior felony convictions, one prior misdemeanor marijuana possession conviction and several traffic infractions, most of which had been dismissed, was not a factor amounting to "significant mitigating weight." Robinson v. State, 775 N.E.2d 316, 321 (Ind. 2002). Here, Haupt has a minimal criminal history consisting of four traffic violations and two counts of check deception as Class A misdemeanors. Haupt's minimal criminal history, while not a significant aggravating factor, is also not a significant mitigating factor. The trial court did not abuse its discretion by failing to assign more weight to this mitigator.

We are also compelled to note that the trial court found as an aggravating circumstance that Haupt was in a position of trust with the three victims, and even sometimes served as their babysitter. A position of trust in itself is a valid aggravating factor supporting the maximum enhancement of a sentence for child molesting. Hart v. State, 829 N.E.2d 541, 544 (Ind. Ct. App. 2005). In this case the trial court relied on an additional seven aggravating factors to conclude that the aggravating circumstances outweighed the mitigating circumstances. The trial court is responsible for determining

the appropriate weight to give aggravating and mitigating circumstances. Powell, 751 N.E.2d at 315 (citations omitted). In light of the trial court's careful explanation during the sentencing hearing of each factor on which it relied, we cannot conclude that it abused its discretion.

III. Appropriate Sentence

Haupt next contends that his aggregate sentence of fifty years is inappropriate in light of the nature of the offense and character of the offender. Appellate courts have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, the court concludes the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B) (2007); Marshall v. State, 832 N.E.2d 615, 624 (Ind. Ct. App. 2005), trans. denied.

Concerning the nature of the offense, we find it significant that Haupt subjected three victims to sexual abuse. "Enhanced and consecutive sentences seem necessary to vindicate the fact that there were separate harms and separate acts against more than one person." Perry v. State, 845 N.E.2d 1093, 1097 (Ind. Ct. App. 2006), trans. denied (citing Serino v. State, 798 N.E.2d 852, 857 (Ind. 2003)). Regarding the character of the offender, we find it relevant that Haupt was in a position of trust with these three girls, at times living under the same roof and acting as their babysitter. He also threatened the girls with harm if they told anybody about the molestations. These facts reveal Haupt's deplorable character. In light of the nature of the offense and character of the offender, we conclude that Haupt's enhanced aggregate sentence of fifty years is not inappropriate.

Conclusion

We conclude that the trial court did not abuse its discretion in refusing to assign mitigating weight to Haupt's alleged remorse and in concluding that the aggravating circumstances outweigh the mitigating circumstances. We also conclude that Haupt's aggregate sentence of fifty years is appropriate in light of the nature of the offense and character of the offender.

Affirmed.

NAJAM, J., and MAY, J., concur.